IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 6TH JUNE 2007 / 16TH JYAISHTA 1929

WP(C).No. 29478 of 2005(H)

AGAINST THE ORDER DATED 17/08/05 IN EP.49/04 IN OS.249/2001 of ADDL.SUB COURT,PARAVUR

.....

PETITIONER:

CATHOLIC SYRIAN BANK LIMITED
BRANCH, NORTH PARUR, REPRESENTED
BY ITS SENIOR MANAGER.

BY ADV. SRI.R.BINDU (SASTHAMANGALAM)

RESPONDENTS:

---

1. M.T. LAIJU, S/O. V. THANKAPPAN,
MANAPARAMBIL HOUSE, NANTHIATTUKUNNAM,
NORTH PARUR.

2. V. THANKAPPAN, S/O. VELU,
MANAPARAMBIL HOUSE, NANTHIATTUKUNNAM,
NORTH PARUR.

3. M.T. BAIJU, S/O. V. THANKAPPAN,
MANAPARAMBIL HOUSE, NANTHIATTUKUNNAM,
NORTH PARUR.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/06/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE AFFIDAVIT AND PETITION FILED BY THE PETITIONER DT.16.8.05.

EXT.P2 : TRUE COPY OF THE ORDER PASSED BY THE ADDITIONAL SUB JUDGE, NORTH PARAVUR DT.17.8.05.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 29478 OF 2005

Dated this the 6th day of June, 2007

JUDGMENT

The decree holder Bank is aggrieved by Ext.P2 order by which the execution court refused to reduce the reserve price of the decree schedule property. In the draft sale proclamation, which was filed by the Bank, originally, the upset price of the property was shown as 1.5 lakhs. In the application, the bank submitted on the basis of a valuation report received from its approved valuer that the correct market value of the property is only 2.5 lakhs and that nobody will purchase the property for a higher amount. The learned judge taking note of clause 2 of Rule 72 A of order XXI CPC fixed a sum of Rs.3,89,000/-, the amount due to the mortgagee bank on account of principal interest and cost as the reserve price. The learned judge noticed that the Bank has not produced any material enabling the court to fix the reserve price at an amount lesser than the amount due to the mortgagee bank towards principal, interest, and cost as per decree.

2. Mr.R.Bindu, learned counsel for the Bank fairly conceded that the valuation report relied on by the Bank had not been produced before the Court below. If it is so, the court below cannot be blamed for its view. Leave had been granted to the mortgagee for participating in the

auction and reserve price has to be fixed at Rs.3,89,000/- in terms of the Code.

3. Mr.Bindu submitted that having regard to the correct market value of the property it is very unlikely that there will be bidders to purchase the property for the reserve price presently fixed and hence mortgagee bank may not be insisted upon to purchase the property for reserve price fixed by the court which is below the market price.

4. Even though respondents have been served with notice, they have not entered appearance before this court.

Having considered the rival submissions made before me by the learned counsel for the petitioner, I am of the view that without setting aside Ext.P2 this Writ Petition can be disposed of issuing the following directions:

The court below will make one attempt to sell the property for the reserve price fixed under Ext.P2. If it is seen that there are no 3rd party bidders to purchase the property for the reserve price presently fixed, the court will not insist on the mortgagee bank purchasing the property for that price. The court will under such an event adjourn the sale to another date. The petitioner bank will thereafter produce the valuation certificate which reports the correct present market value of the property in question. A fresh application should be filed by the Bank for reducing

the reserve price to the valuation certified by the valuer in which case that application will be favourably considered by the court.

PIUS C. KURIAKOSE, JUDGE

btt